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Texas Council on Consumer Direction Waiver Processes

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Sept. 11, 2017

Objectives

- Provide overview – What is a Waiver?
- Provide information on the waiver activity processes
- Authority for CDS – Self-direction in Waivers



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Waivers Overview

What is a Waiver?

A waiver enables states to receive federal Medicaid matching funds without complying with certain requirements set forth in the §1902 of the Social Security Act (SSA).

- Limiting a waiver service to specific geographic areas §1902(a)(1) (Statewideness).
- Comparability of services, such as offering an array of community-based services to those who would otherwise require institutionalization §1902(a)(10)(B) (Comparability)



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What is a Waiver? (cont.)

A waiver enables states to receive federal Medicaid matching funds without complying with certain requirements set forth in the §1902 of the Social Security Act (SSA).

- Income and resources -- States can apply institutional income and resource (eligibility) rules for medically needy individuals who would otherwise qualify for waiver services up to 300% of the federal poverty level (FPL) §1902(a)(10)(C)(i)(III) (Income and Resources for the Medically Needy)
- Freedom of choice



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Waiver Types

- 1115 Demonstration Waiver
- 1915(c) Waivers



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1115 Demonstration Waiver

- Allow states to cover new populations, expand services, allow cost sharing, family planning, and pharmacy coverage. Must be budget neutral.
- Allows Texas to operate programs that test policy innovations likely to further the objectives of the Medicaid program.



1915(c) Waivers

- 1915(c) waivers are home and community-based to provide long-term care to individuals in settings as an alternative to institutions.
- A waiver is initially approved for 3 years and renewed every 5 years thereafter.
- Programs can provide medical and non-medical services.

| <u>1915(c)</u> | | | |
|----------------|------|-------|-----|
| CLASS | DBMD | MDCP | YES |
| | HCS | TxHmL | |

1915(c) Waivers (cont.)

1915(c) Waiver Requirements include:

- Freedom of choice is required absent a concurrent Medicaid authority
- Must demonstrate cost neutrality
- Non-waiver services must be exhausted first
- 1915(c) services must be necessary to prevent institutionalization
- Waivers must protect the individuals' health and welfare
- Must specify the maximum number of participants for each waiver year and criteria for selection of entrants



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Waiver Activities

Waiver Activities

- New waiver
- Amendments
- Renewals/Extensions
- Terminations/Transitions



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Waiver Amendments

Reasons to amend the waiver

- Legislatively mandated
- Changes to state or federal rules/statute
- To incorporate stakeholder input
- Lawsuits/court orders
- Federal partners require change
- Executive or management directive
- System or policy changes



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Waiver Amendments

Examples of changes

- Additional slots allocated
- New services added
- Geographical areas change
- New populations added
- A change in the service delivery option



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Waiver Amendments

Substantive

- Changes include:
 - Revisions to services
 - Provider qualifications
 - Rate methodology
 - Constriction of eligible population
 - Adding services
- Can only take effect prospectively.

*This list is not comprehensive and most amendments are substantive.



Waiver Amendments

Non-Substantive

- Increase in unduplicated number of participants
- Other changes as confirmed by CMS; for example, technical corrections.
- Can have a retroactive effective date.



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Notice of Waiver Activities

The following notices are required when the state submits an initial/renewal waiver application and waiver amendments.

- **Notice to Tribal Governments**

- Notice to the state's Tribal Governments is required at least sixty (60) days before submitting waiver activity to CMS.

- **Public Notice of Intent**

- The Public Notice of Intent (PNI) must be published in the Texas Register at least 30 days prior to submitting waiver activity to CMS.
- The PNI sent to local Office of Social Services for posting.



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Notice of Waiver Activities (cont.)

The following notices are required when the state submits an initial/renewal waiver application and waiver amendments.

- **Notice to the Legislature and Governor's Office (Leg. Com.)**
 - The Legislature and Governor's office must be notified at least one (1) day prior to submitting a waiver activity to CMS.
- **Texas Register link:**

<http://www.sos.texas.gov/texreg/index.shtml>



Public Input

- All new waiver applications, amendments, and renewals require a 30-day public input period.
- Renewals also require stakeholder input during the drafting of the renewal application.



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Public Input (cont.)

- The State is required to consider and modify the renewal/amendment, as the State deems appropriate, to account for public comment.
- A summary of the comments received during the public notice and input period, reasons why comments were not adopted, and any modifications to the renewal / amendment must be provided to CMS in the public input section of the waiver application.



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Overview of the Waiver Application Process

Initial, Renewal, and Amendment

CMS Review Process for 1915(c) Waivers

- CMS has 90 calendar days to approve or deny a waiver submission.
- If CMS requires further information to process a waiver submission, they will issue a Request for Additional Information (RAI).
 - **Formal RAI (FRAI)**
 - Only one FRAI is allowed per 1915(c) waiver activity.
 - A FRAI stops the CMS 90-day clock.
 - Once the state responds to the FRAI, the 90-day approval period starts over.



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CMS Review Process for 1915(c) Waivers (cont.)

- CMS has 90 calendar days to approve or deny a waiver submission.
- If CMS requires further information to process a waiver submission, they will issue a Request for Additional Information (RAI).
 - **Informal RAI (IRAI)**
 - CMS may issue several IRAI's per waiver activity.
 - The first IRAI is usually received by the state within 45 days of submittal of the application to CMS, but this is not required of CMS.



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1115 Timelines

- **Amendments**
 - Requests must be submitted to CMS for approval no later than 120 days prior to the planned date of implementation and may not be implemented until approved.



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Authority for CDS

- Appendix E of 1915(c) waivers gives states authority to offer CDS.
- Process for adding services available through the CDS option to waivers:
 - Approval from HHSC leadership
 - Submit amendment to CMS
 - Approval from CMS
 - Establish rates
 - Update forms/rules/policies/service codes/IT system/Webpages
 - Issue information letters
 - Implement



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Resource

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Questions
